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January 30, 2001

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Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129

Notice by Delaware Public Service Commission of Its Intention to Enforce Preferred Carrier Verification Procedures for A Consumer's Selection of Carriers to Provide Local Exchange and Intrastate Toll Services

Dear Madam Secretary:

By the provisions of 47 C.F.R. § 64.1110, the Federal Communications Commission ("FCC") asked each state utility commission to notify it if the state commission chose to "opt-in" and administer the FCC's unauthorized carrier change rules and remedies. The Delaware Public Service Commission ("Del PSC") considered that option at its regular meetings on November 21 and December 19, 2000. After deliberations, and based in large part on the advice of counsel, the Del PSC provides you with this notice that the Del PSC intends to fulfill its duty under state law and vigorously enforce its own (and the FCC's) verification rules for unauthorized changes involving *local exchange and intrastate toll, and other intrastate services*.¹ However, the Del PSC will refer all complaints concerning unauthorized changes involving *interstate services* to the FCC for final resolution. The Del PSC would ask the FCC - which continues to have statutory responsibility for interstate carriers - to vigorously enforce the FCC's verification and remedial provisions for Delawareans in the context of *interstate services*.

While some may label the above as a "partial opt-in," the Del PSC believes that it is not

¹Because Delaware is a "single-LATA" state, all intrastate calls are intraLATA communications. However, some intraLATA calls are interstate in nature due to the reach of the same LATA into southeastern Pennsylvania. In contrast, all interLATA calls originating in Delaware are interstate in nature.

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"opting" into anything. Rather, it will simply be exercising the authority granted it by state law - and re-affirmed by Congress in the second sentence of 47 U.S.C. § 258(a) - to superintend "slamming" in the context of intrastate services. Indeed, the Del PSC's position mirrors the intrastate/interstate enforcement scheme described in paragraph 80 of the Section 258 Order.²

Request to Provide Notice Concerning Division of Slamming Enforcement Responsibility

Given this continued existence of dual enforcement responsibility, the Del PSC requests not only carriers but the FCC, to provide accurate information to Delaware consumers about where they should bring their slamming complaints. When contacted by Delaware consumers, carriers and the FCC should ascertain the nature of the slammed services. If the complaint involves *interstate* services, consumers should be referred to the FCC; if the unauthorized change involved *local exchange* or *intrastate toll* services, the consumer should be directed to the Del PSC. For its part, the Del PSC will refer interstate slamming complaints received by it to the FCC. Finally, the Del PSC asks the FCC to include on its "Slamming" webpage a similar explanation directing the consumer to the appropriate enforcement agency depending on the nature of the slammed service.

Delaware consumers with slamming complaints arising from *local exchange*, *intrastate toll*, and other *intrastate* services should be directed to:

Delaware Public Service Commission
Attention: Slamming Complaint
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904
(800) 282-8574 (toll-free in Delaware)
(302) 739-4247 (voice and text telephone)
<http://www.state.de.us/delpsc/complaint.html>
(website complaint)

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The notice should also indicate to consumers that if they choose to file a written complaint with the Del PSC, they should make sure they include: (1) the consumer's name, address, and day-time telephone number; (2) the names of the authorized and the slamming carriers; (3) a brief description of the facts; and (4) a copy of all billings received for slammed services.

Del PSC's Enforcement and Remedial Regime for Local Exchange and Intrastate Toll Slamming Disputes

²Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, Second Report and Order and Further NPRM, 14 FCC Rcd. 1508 (1998) ("Section 258 Order").

The Del PSC realizes that the enforcement scheme described above does not allow Delawareans to have a single, "one stop," location to lodge all of their slamming complaints. However, as noted above, the Del PSC's decision to limit its enforcement to intrastate services is driven by the limits on the authority granted it by state law. In the recently-enacted Delaware anti-slamming and cramming act,³ the Delaware General Assembly directed the Del PSC to promulgate and enforce regulations related to a customer's selection of a carrier for local exchange services or intraLATA, intrastate services.⁴ However, the act does not provide for the Del PSC to exercise any authority to resolve complaints concerning the selection of an interstate carrier. Nor does the statute authorize the Del PSC to accept any offer, either from Congress or the FCC, to administer an enforcement scheme for interstate services. In fact, the limited reach set forth in the state slamming act is consistent with the scope of the state's Public Utility Act. It too, in the telecommunications context, limits the PSC's jurisdictional reach to intrastate services and intrastate carriers. Thus, in counsel's view, there is simply no state law enabling the Del PSC to resolve complaints concerning unauthorized changes in carriers providing interstate services.

Of course, the Del PSC understands that, in resolving slamming disputes involving intrastate services, the governing *verification* rules are those promulgated by the FCC, as supplemented by any consistent state rules.⁵ At the same time, on the remedial side, the Del PSC believes that, in the intrastate context, it is not cabined by the remedies prescribed by the FCC. Of course, the Congressional directive in section 258(b) would still apply: the slamming intrastate carrier would be liable to the preferred intrastate carrier for all amounts collected from the subscriber. However, the state slamming act mandates that a carrier shall neither bill to, nor collect from, any person a charge for any service to which such person had not agreed nor subscribed.⁶ In effect, this provision grants the consumer complete absolution for all services provided by the slamming carrier. Similarly, present Del PSC regulations permit the Commission to direct the slamming carrier to either refund or void any charges the carrier has caused to be billed as a result of an unauthorized change in the preferred intrastate carrier.⁷ Thus, Delaware, for intrastate services, provides consumer remedies broader than the 30 day absolution and 50 per cent damage remedies prescribed by 47 C.F.R. §§ 64.1160 & 64.1170. Given that

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³26 Del. C. §§ 922-930 (2000 Supp.).

⁴26 Del. C. § 923(2), (4) (2000 Supp.).

⁵47 U.S.C. § 258(a). *Accord* 26 Del. C. § 930(b) (2000 Supp.) (Del PSC rules must be consistent with federal law).

⁶26 Del. C. §§ 924© (2000 Supp.).

⁷Rule 19(d), *Rules for the Provision of Telecommunications Services* (Del. PSC Sept. 11, 2000).

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these state law sanctions are "other remedies available by law,"⁸ the Del PSC expects to impose such sanctions in resolving intrastate slamming disputes, without being limited by the FCC's remedial provisions.⁹ Indeed, such vigorous enforcement of the state remedies would be appropriate given that the FCC's slamming provisions are currently subject to an appeal.

Cooperation with the FCC

Despite the legal limitations on its jurisdiction, the Del PSC is eager to have all slamming complaints by Delawareans promptly and fairly resolved. To that end, it offers to informally initially investigate, and attempt to seek amicable resolution of, *interstate* slamming complaints. For example, the Del PSC stands ready - if the FCC agrees - to respond to a consumer's initial complaint concerning slamming of interstate toll services by informally contacting the unauthorized and authorized carriers to see if the matter could be resolved without further formal complaint proceedings. However, the Del PSC would assume no authority for final resolution of the interstate complaint. Instead, if the Del PSC's informal efforts failed to bring about a voluntary resolution within a narrow time window of one week or so, the Del PSC would then forward the consumer and her interstate complaint to the FCC for final resolution.

Similarly, as suggested in paragraph 80 of the Section 258 Order, the Del PSC stands ready, in those instances where it adjudicates an *intrastate* slamming complaint, to send its order and findings to the FCC to assist in the resolution of any companion *interstate* slamming complaint. So too, the Del PSC stands ready to periodically provide to the FCC information about the number of intrastate slamming complaints and the names of offending carriers.

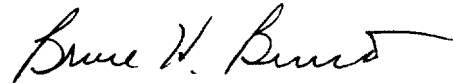
The Del PSC believes its position is compelled by Delaware law and consistent with federal law. We have set it out in some length in order to inform both the FCC and involved carriers, both interstate and intrastate, of the "why" for this division of enforcement responsibilities for slamming complaints raised by Delaware consumers. If the FCC has a differing view about this allocation of duties, the Del PSC would ask for the opportunity to discuss the FCC's views. The Del PSC also awaits the FCC's response concerning the Del PSC's offer to undertake informal mediation efforts in cases of complaints concerning unauthorized changes of interstate carriers. Finally, the Del PSC would again ask the FCC to provide appropriate notice on the FCC's "Slamming" website concerning the division of enforcement authority over Delaware slamming complaints.

⁸47 U.S.C. § 258(b).

⁹See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, First Order on Reconsideration, 15 FCC Rcd. 8158 at ¶ 38 n. 105 (2000). The Del PSC would also note that the FCC's remedial provisions are premised, in part, on the damage remedies available under 47 U.S.C. §§ 206-208. Those provisions apply only to *interstate* common carriers and provide a forum for relief only before the FCC and the federal courts. In contrast, the state law remedial provisions apply to intrastate carriers and services.

If you need more information, please do not hesitate to contact either of the undersigned.

Respectfully submitted,



Bruce H. Burcat
Executive Director



Gary A. Myers
Deputy Attorney General
Delaware Department of Justice

cc: The Chairman and Members of the Public Service Commission
Chief, Consumer Information Bureau, FCC
Constance McDowell, Chief of Tech. Services, PSC
Patricia Stowell, Public Advocate
Twenty Largest Certificated Intrastate Telecommunications Carriers
J. Bradford Ramsay, Esq., Gen. Counsel, NARUC

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